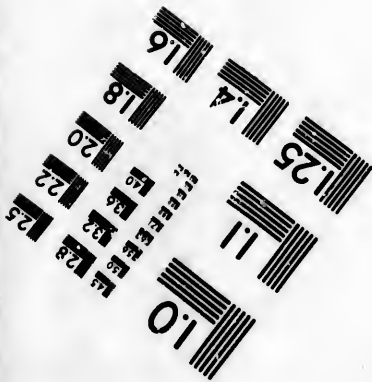
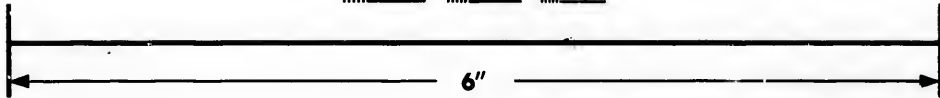
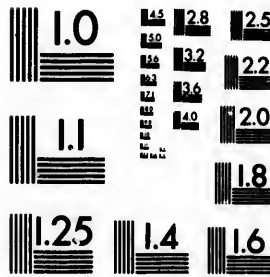


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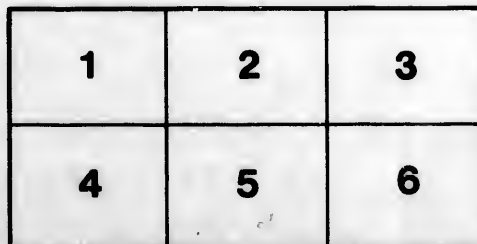
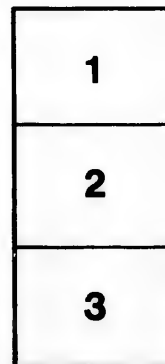
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THE  
Duke of NEWCASTLE's  
LETTER,

BY

His Majesty's Order,

To Monsieur *MICHELL*, the King of  
*Prussia's* Secretary of the Embassy, in Answer to the  
Memorial, and other Papers, deliver'd, by Monsieur  
*MICHELL*, to the Duke of NEWCASTLE, on the  
23d of *November*, and 13th of *December* last.

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Published by Authority.

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L O N D O N:  
Printed by EDWARD OWEN, in *Warwick-Lane*. 1753.

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S I R,

Whitehall, Feb. 8, 1753.



LOST no Time in laying before the King, the Memorial, which you delivered to me on the 23d of *November* last, with the Papers, that accompanied it.

His Majesty found the Contents of it so extraordinary, that he would not return an Answer to it, or take any Resolution upon it, 'till he had caused both the Memorial, and the *Exposition des Motifs*, &c. which you put into my Hands soon after, by Way of Justification of what had passed at *Berlin*, to be maturely considered ; and till His Majesty should thereby be enabled to set the Proceedings of the Courts of Admiralty here, in their true Light ; to the End, that his *Prussian* Majesty, and the whole World, might be rightly informed of the Regularity of their Conduct ; in which they appear, to have followed the only Method, which has ever been practised by Nations, where Disputes of this Nature could happen ; and strictly to have conformed themselves to the Law of Nations, universally allowed to be the only Rule, in such Cases, when there is nothing stipulated to the contrary, by particular Treaties between the Parties concerned.

This



This Examination, and the full Knowledge of the Facts resulting from it, will shew, so clearly, the Irregularity of the Proceedings of those Persons, to whom this Affair was referred at *Berlin*; that it is not doubted, from his *Prussian* Majesty's Justice and Discernment, but that he will be convinced thereof, and will revoke the Detention of the Sums assigned upon *Silesia*; the Payment of which, his *Prussian* Majesty engaged to the Empress Queen to take upon himself, and of which the Reimbursement was an express Article in the Treaties, by which the Cession of that Dutchy was made.

I, therefore, have the King's Orders to send you the Report, made to His Majesty, upon the Papers abovementioned, by Sir *George Lee*, Judge of the Prerogative Court; Doctor *Paul*, His Majesty's Advocate General in the Courts of Civil Law; Sir *Dudley Ryder*, and Mr. *Murray*, His Majesty's Attorney, and Solicitor General. This Report is founded on the Principles of the Law of Nations, received and acknowledged by Authorities, of the greatest Weight, in all Countries; so that His Majesty does not doubt, but that it will have the Effect desired.

The Points, upon which this whole Affair turns, and which are decisive, are,

*First*, That Affairs of this Kind are, and can be, cognizable, only in the Courts belonging to that Power, where the Seizure is made; and, consequently, that the  
Erecting

Erecting foreign Courts, or Jurisdictions elsewhere, to take Cognizance thereof, is contrary to the known Practice of all Nations, in the like Cases ; and, therefore, a Proceeding which none can admit.

*Secondly*, That those Courts, which are generally stiled Courts of Admiralty, and which include both the inferior Courts, and the Courts of Appeal, always decide according to the universal Law of Nations only ; except in those Cases, where there are particular Treaties between the Powers concerned, which have altered the Dispositions of the Law of Nations, or deviate from them.

*Thirdly*, That the Decisions, in the Cases complained of, appear, by the inclosed Report, to have been made singly, upon the Rule prescribed by the Law of Nations ; which Rule is clearly established, by the constant Practice of other Nations, and by the Authority of the greatest Men.

*Fourthly*, That, in the Case in Question, there cannot even be pretended to be any Treaty, that has altered this Rule, or by Virtue of which, the Parties could claim any Privileges, which the Law of Nations does not allow them.

*Fifthly*, That as, in the present Case, no just Grievance can be alledged, nor the least Reason given, for saying, That Justice has been denied, when regularly demanded ; and as, in most of the Cases complained of, it was the Complainants themselves, who neglected the only

B

proper

proper Means of procuring it ; there cannot, consequently, be any just Cause, or Foundation, for Reprizals.

*Sixthly*, That, even though Reprizals might be justified by the known and general Rules of the Law of Nations ; it appears, by the Report, and indeed from Considerations, which must occur to every body, that Sums, due to the King's Subjects by the Empress Queen, and assigned by her upon *Silesia* ; of which Sums his *Prussian* Majesty took upon himself the Payment, both by the Treaty of *Breslau*, and by that of *Dresden*, in Consideration of the Cession of that Country, and which, by Virtue of that very Cession, ought to have been fully, and absolutely discharged, in the Year 1745, that is to say, one Year before any of the Facts complained of did happen ; what is the constant Practice between all the most respectable Powers, be seized, or stopt, by Way of Reprizals.

The several Facts, which are particularly mentioned above, are so clearly stated, and proved, in the inclosed Report ; that I shall not repeat the particular Reasons and Authorities alledged in Support of them, and in Justification of the Conduct and Proceedings in Question. The King is persuaded, that these Reasons will be sufficient also, to determine the Judgment of all impartial People, in the present Case.

It is material to observe, upon this Subject, that this Debt on *Silesia*, was contracted by the late Emperor *Charles* the Sixth; who engaged, not only to fulfil the Conditions expressed in the Contract, but even to give the Creditors such further Security, as they might afterwards reasonably ask. This Condition had been very ill performed by a Transfer of the Debt, which had put it in the Power of a Third Person to seize, and confiscate it.

You will not be surpris'd, Sir, that, in an Affair, which has so greatly alarmed the whole Nation, who are entitl'd to that Protection, which His Majesty cannot dispense with himself from granting; the King has taken Time, to have Things examined to the Bottom; and that His Majesty finds himself oblig'd, by the Facts, to adhere to the Justice, and Legality, of what has been done in His Courts, and not to admit the Irregular Proceedings, which have been carried on elsewhere.

The late War furnish'd many Instances, which ought to have convinc'd all *Europe*, how scrupulously the Courts here do Justice, upon such Occasions. They did not even avail themselves of an open War, to seize, or detain, the Effects of the Enemy, when it appear'd that those Effects were taken wrongfully before the War. This Circumstance must do Honour to their Proceeding; and will, at the same Time, shew, that it was as little necessary as proper, to have Recourse elsewhere to Proceedings, entirely new, and unusual.

The

The King is fully persuaded, that what has passed at *Berlin*, has been occasioned, singly, by the ill-grounded Informations, which his *Prussian* Majesty has received, of these Affairs : And does not at all doubt, but that, when his *Prussian* Majesty shall see them in their true Light, his natural Disposition to Justice and Equity will induce him, immediately to rectify the Steps, which have been occasioned by those Informations ; and to complete the Payment of the Debt charged on the Dutchy of *Silesia*, according to his Engagements for that Purpose.

*I am, with much Consideration,*

**S I R,**

*Your most Obedient,*

*Humble Servant,*

**Holles Newcastle.**



To the KING's most Excellent  
M A J E S T Y.

*May it please your Majesty,*



**I**N Obedience to your Majesty's Commands, signified to us by his Grace the Duke of *Newcastle*, we have taken the Memorial, Sentence of the *Prussian* Commissioners, and Lists marked A and B, which were delivered to his Grace by *Monf. Michell*, the *Prussian* Secretary here, on the 23d of *November* last; and also the printed *Exposition des Motifs*, &c. which was delivered to his Grace the 13th of *December* last, into our serious Consideration. And we have directed the proper Officer to search the Registers of the Court of Admiralty, and inform us how the Matter appeared from the Proceedings there, in Relation to the Cases mentioned in the said Lists A and B, which he has accordingly done.

C

And

And your Majesty having commanded us to report our Opinion, concerning the Nature and Regularity of the Proceedings, under the *Prussian* Commission, mentioned in the said Memorial ; and of the Claim or Demand pretended to be founded thereupon ; and how far the same are consistent with, or contrary to, the Law of Nations, and any Treaties subsisting between your Majesty and the King of *Prussia*, the established Rules of Admiralty Jurisdiction, and the Laws of this Kingdom :

For the greater Perspicuity, we beg leave to submit our Thoughts upon the whole Matter in the following Method :

1<sup>st</sup>, To state the Clear Established Principles of Law.

2<sup>dly</sup>, To state the Fact.

3<sup>dly</sup>, To apply the Law to the Fact.

4<sup>thly</sup>, To observe upon the Questions, Rules and Reasonings alledged in the said Memorial, Sentence of the *Prussian* Commissioners, and *Exposition des Motifs*, &c. which carry the Appearance of Objections, to what we shall advance upon the former Heads.

First, *As to the LAW.*

When two Powers are at War, they have a Right to make Prizes of the Ships, Goods, and Effects, of each other, upon the High Seas: Whatever is the Property of the Enemy, may be acquired by Capture at Sea ; but the  
Property

Property of a Friend, cannot be taken, provided he observes his Neutrality.

Hence the Law of Nations has established,

That the Goods of an Enemy, on Board the Ship of a Friend, may be taken.

That the lawful Goods of a Friend, on Board the Ship of an Enemy, ought to be restored.

That Contraband Goods, going to the Enemy, tho' the Property of a Friend, may be taken as Prize; because supplying the Enemy, with what enables him better to carry on the War, is a Departure from Neutrality.

By the Maritime Law of Nations, univerfally and immemorially received, there is an established Method of Determination, whether the Capture be, or be not, lawful Prize.

Before the Ship, or Goods, can be disposed of by the Captor, there must be a regular judicial Proceeding, wherein both Parties may be heard, and Condemnation thereupon as Prize, in a Court of Admiralty, judging by the Law of Nations and Treaties.

The proper and regular Court, for these Condemnations, is the Court of that State to whom the Captor belongs.

The Evidence to acquit or condemn, with, or without, Costs or Damages, must, in the first Instance, come merely from the Ship taken, *viz.* the Papers on Board, and



and the Examination on *Oath* of the Master and other Principal Officers ; for which Purpose, there are Officers of Admiralty in all the considerable Sea Ports of every Maritime Power at War, to examine the Captains, and other Principal Officers of every Ship, brought in as Prize, upon General and Impartial Interrogatories : If there don't appear from thence Ground to condemn, as Enemies Property, or Contraband Goods going to the Enemy, there must be an Acquittal ; unless from the aforefaid Evidence, the Property shall appear so doubtful, that it is reasonable to go into further Proof thereof.

A Claim of Ship, or Goods, must be supported by the Oath of some body, at least as to Belief.

The Law of Nations requires good Faith : Therefore every Ship must be provided with compleat and genuine Papers ; and the Master at least should be privy to the Truth of the Transaction.

To enforce these Rules, if there be false or colourable Papers ; if any Papers be thrown over-board ; if the Master and Officers examined in *Preparatoria* grossly prevaricate ; if proper Ship's Papers are not on Board ; or if the Master and Crew can't say, whether the Ship or Cargo be the Property of a Friend or Enemy, the Law of Nations allows, according to the different Degrees of Misbehaviour, or Suspicion, arising from the Fault of the Ship taken, and other Circumstances of the Case, Costs to be paid,

paid, or not to be received, by the Claimant, in Case of Acquittal and Restitution. On the other Hand, if a Seizure is made, without probable Cause, the Captor is adjudged to pay Cofts and Damages: For which Purpose, all Privateers are obliged to give Security for their good Behaviour; and this is referred to, and expressly stipulated, by many Treaties. \*

Tho' from the Ships Papers, and the preparatory Examinations, the Property don't sufficiently appear to be Neutral, the Claimant is often indulged with Time, to send over Affidavits to supply that Defect: If he will not shew the Property, by sufficient Affidavits, to be Neutral, it is presumed to belong to the Enemy. Where the Property appears from Evidence not on Board the Ship, the Captor is justified in bringing her in, and excused paying Cofts, because he is not in Fault; or, according to the Circumstances of the Case, may be justly intitled to receive his Cofts.

If the Sentence of the Court of Admiralty is thought to be erroneous, there is in every Maritime Country a superior Court of Review, consisting of the most con-

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\* Treaty between *England* and *Holland*, 17 Feb. 1668. Art. 13.—Treaty 1 Dec. 1674. Art. 10.—Treaty between *England* and *France* at *St. Germain's*, 24 Feb. 1677. Art. 10.—Treaty of Commerce at *Ryswick*, Sept. 20. 1697. between *France* and *Holland*, Art. 30.—Treaty of Commerce at *Utrecht*, 31 March, 1713. between *Great Britain* and *France*, Art. 29.

siderable Persons, to which the Parties, who think themselves aggrieved, may Appeal; and this superior Court judges by the same Rule which governs the Court of Admiralty, *viz.* The Law of Nations, and the Treaties subsisting with that neutral Power, whose Subject is a Party before them.

If no Appeal is offered, it is an Acknowledgement of the Justice of the Sentence by the Parties themselves, and conclusive.

This Manner of Tryal and Adjudication is supported, alluded to, and enforced, by many Treaties. \*

In

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\* As appears, with respect to Courts of Admiralty adjudging the Prizes taken by those of their own Nation, and with respect to the Witnesses to be examined in those Cases, from the following Treaties.—Treaty between *England* and *Holland*, 17 Feb. 1668. Art. 9. and 14.—Treaty 1 Dec. 1674. Art. 11.—Treaty 29 April 1689. Art. 12, 13.—Treaty between *England* and *Spain*, 23 May, 1667. Art. 23.—Treaty of Commerce at *Ryswick*, 20 Sept. 1697. between *France* and *Holland*, Art. 26 and 31.—Treaty between *England* and *France*, 3 Nov. 1655. Art. 17 and 18.—Treaty of Commerce between *England* and *France* at *St. Germain*, 29 March, 1632. Art. 5 and 6.—Treaty at *St. Germain*, 24 Feb. 1677. Art. 7.—Treaty of Commerce between *Great Britain* and *France*, at *Utrecht*, 31 March, 1713. Art. 26 and 30.—Treaty between *England* and *Denmark*, 29 Nov. 1669. Art. 23 and 34. *Heinoccius*, who was Privy-Councillor to the King of *Prussia*, and held in the greatest Esteem, in his Treatise *de Navibus ob vecturam velitarum mercium commissis*, Cap. 2. Sect. 17 and 18, speaks of this Method of Tryal.

With Respect to Appeals or Reviews:—From Treaty between *England* and *Holland*, 1 Dec. 1674. Art. 12, as it is explained by Art. 2, of the Treaty at *Westminster*, 6 Feb. 1715-16.—Treaty between *England* and *France*, at *St. Germain*,

In this Method, all Captures at Sea were try'd, during the last War, by *Great Britain, France* and *Spain*, and submitted to by the neutral Powers. In this Method, by Courts of Admiralty acting according to the Law of Nations, and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of *Europe*. Any other Method of Tryal would be manifestly unjust, absurd, and impracticable.

Tho' the Law of Nations be the general Rule, yet it may, by mutual Agreement between two Powers, be varied or departed from ; and where there is an Alteration or Exception, introduced by particular Treaties, that is the Law between the Parties to the Treaty ; and the Law of Nations only governs so far as it is not derogated from by the Treaty.

Thus by the Law of Nations, where two Powers are at War, all Ships are liable to be stopped, and examined to whom they belong, and whether they are carrying Contraband to the Enemy : But particular Treaties have enjoined a less Degree of Search, on the Faith of producing solemn Passports, and formal Evidences of Property, duly attested.

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*Germaines*, 24 Feb. 1677, Art. 12.—Treaty of Commerce at *Ryfwick*, 20. Sept. 1697, between *France* and *Holland*, Art. 33.—Treaty of Commerce at *Utrecht*, 31 March, 1713, between *Great Britain* and *France*, Art. 31 and 32, and other Treaties.

Particular

Particular Treaties too have inverted the Rule of the Law of Nations, and, by Agreement, declared the Goods of a Friend, on Board the Ship of an Enemy, to be Prize ; and the Goods of an Enemy, on Board the Ship of a Friend, to be free, as appears from the Treaties already mentioned, and many others \*.

So likewise, by particular Treaties, some Goods, reputed Contraband by the Law of Nations, are declared to be free.

If a Subject of the King of *Prussia* is injured by, or has a Demand upon, any Person here, he ought to apply to your Majesty's Courts of Justice, which are equally open and indifferent to Foreigner or Native : So *vice versa*, if a Subject here is wronged by a Person living in the Dominions of his *Prussian* Majesty, he ought to apply for Redress in the King of *Prussia's* Courts of Justice.

If the Matter of Complaint be a Capture at Sea during War, and the Question relative to Prize, he ought to apply to the Judicatures established to try these Questions.

The Law of Nations, founded upon Justice, Equity, Convenience, and the Reason of the Thing, and confirmed by long Usage, don't allow of Reprizals, except in Case of violent Injuries, directed or supported by the

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\* Particularly by the aforesaid Treaty between *England* and *Holland*, Dec. 1674. and the Treaty of *Utrecht*, between *Great Britain* and *France*.

State, and Justice absolutely denied, *in Re minime dubia*, by all the Tribunals, and afterwards by the Prince \*.

Where the Judges are left free, and give Sentence according to their Conscience, though it should be erroneous, that would be no Ground for Reprizals. Upon doubtful Questions, different Men think and judge differently; and all a Friend can desire, is, that Justice should be as impartially administered to him, as it is to the Subjects of that Prince, in whose Courts the Matter is try'd.

Secondly, *As to the F A C T.*

We have subjoined hereto two Lists, tallying with those marked A. and B. which were delivered to His Grace the Duke of *Newcastle*, by *Monf. Michell*, with the said Memorial, the 23d of *November* last; and are also printed at the End of the said *Exposition des Motifs*, &c. From whence it will appear, that as to the List A. which contains 18 Ships and their Cargoes,

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\* *Grotius de Jure Belli ac Pacis*, Lib. 3. Cap. 2. Sect. 4, 5.

Treaty between *England* and *Holland*, 31 July, 1667. Art. 31. Reprizals shall not be granted, till Justice has been demanded according to the ordinary Course of Law.

Treaty of Commerce at *Ryswick*, 20 Sept. 1697. between *France* and *Holland*; Art. 4. Reprizals shall not be granted, but on manifest Denial of Justice.

4 If ever taken, were restored by the Captors themselves, to the Satisfaction of the *Prussians*, who never have complained in any Court of Justice here.

1 Was restored by Sentence, with full Costs and Damages, which were liquidated at 2801 *l.* 12 *s.* 1 *d.* Sterling.

3 Ships were restored by Sentence, with Freight, for such of the Goods as manifestly belonged to the Enemy, and were condemned.

4 Ships were restored by Sentence, but the Cargoes, or Part of them, condemned as Prize, or Contraband, and are not now alledged, in the Lists A. or B. to have been *Prussian* Property.

5 Ships and Cargoes were restored by Sentence, but the Claimant subjected to pay Costs, because, from the Ship-Papers, and Preparatory Examinations, there was Ground to have condemned; and the Restitution was decreed, meerly on the Faith of Affidavits afterwards allowed.

1  
18 Ship and Cargo was restored by Sentence upon an Appeal, but, from the Circumstances of the Capture, without Costs on either Side.

There need no Observations upon this List. As to the eight Cases first above-mentioned, there cannot be the Colour of Complaint.

As to the four next, the Goods must be admitted to have been rightly condemned, either as Enemy's Property, or Contraband, for they are not now mentioned in the Lists A. or B. If

If Contraband, the Ship could have neither Freight nor Cofts, and the Sentences were favourable, in reftoring the Ships, upon Prefumption, that the Owners of the Ships were not acquainted with the Nature of the Cargo, or Owners thereof. If Enemy's Property, the Ships could not be entitled to Freight, becaufe the Bills of Lading were falfe, and purported the Property to belong to *Pruffians*.

The Ships could not be intitled to Cofts, becaufe the Cargoes, or Part of them, being lawful Prize, the Ships were rightly brought in.

As the fix remaining Ships and Cargoes were reftored, the only Queftion muft be, upon the Paying or not Receiving Cofts, which depends upon the Circumftances of the Capture, the Fairnefs of the Ship's Documents, and Conduct of her Crew ; and neither the *Pruffian* Commissioners, the faid Memorial, or faid *Expoftion des Motifs*, &c. alledge a fingle Reason, why, upon the particular Circumftances of thefe Cafes, the Sentences were wrong.

As to the Lift B.

Every Ship, on Board which the Subjects of *Pruffia* claim to have had Property, was bound to, or from, a Port of the Enemy ; and many of them appeared clearly to be, in



in Part, laden with the Goods of the Enemy, either under their own, or fictitious Names.

In every Instance, where it is suggested that any Part of the Cargo belong'd to a *Prussian* Subject, though his Property did not appear from the Ship's Papers, or Preparatory Examinations, which it ought to have done, sufficient Time was indulged to that *Prussian* Subject, to make an Affidavit, that the Property was *bona fide* in him : And the Affidavit, of the Party himself, has been received as Proof of the Property of the *Prussian*, so as to intitle him to Restitution.

Where the Party wo'nt swear at all, or swears evasively, it is plain he only lends his Name, to cover the Enemy's Property, as often came out to be the Case beyond the Possibility of Doubt.

It appears by a Letter  $\frac{29 \text{ May}}{9 \text{ June}}$  1747, from Monf. *Andriè* to his *Prussian* Majesty, exhibited in a Cause, and certified to be a true Extract by Monf. *Michell* under his Hand, that this colourable Manner, of screening the Goods of the Enemy, was stated in the following Words.

“ Your Majesty's Subjects ought not to load on Board  
 “ Neutral Ships, any Goods really belonging to the  
 “ Enemies of *England*, but to load them for their own  
 “ Account, whereby they may safely send them to any  
 “ Country they shall think proper, without running any  
 “ Risk : Then, if Privateers commit any Damage to the  
 “ Ships

“ Ships belonging to your Majesty’s Subjects ; *you may de-  
pend on full Justice being done here, as in all the like  
Cases hath been done.*”

List B, contains Thirty-three Cases,

2 Two of them never came before a Court of Justice in  
*England*, but (if taken) were restored by the Captors  
themselves, to the entire Satisfaction of the Owners.

16 In Sixteen of them, the Goods claimed by the *Prussian*  
Subjects, appear to have been actually restored, by Sen-  
tence, to the Masters of the Ships in which they were la-  
den ; and, by the Customs of the Sea, the Master is in  
the Place of the Lader, and answerable to him.

14 In Fourteen of the Cases, the *Prussian* Property was  
not verified, by the Ship’s Papers, or preparatory Exami-  
nations, or Claimant’s own Affidavit, which he was al-  
lowed Time to make.

<sup>1</sup>  
33 And the other Cause, with respect to Part of the  
Goods, is still depending, neither Party having moved  
for Judgment \*. And so conscious were the Claimants,  
that the Court of Admiralty did Right, there is not  
an Appeal, in a single Instance, in List B, and but one,  
in List A.

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\* The *Prussian* has since applied for Judgment on the 29th of January,  
and obtained Restitution.

Thirdly, *To apply the Law to the FACT.*

The Sixth Question, in the said *Exposition des Motifs*, &c. states the Right of Reprisals to be, *puisque'on leur a si long Tems deniè toute la Justice, qu'ils etoient fondez de demander.*

The said Memorial founds the Justice, and Propriety of his *Prussian* Majesty's having Recourse to Reprisals; because his Subjects, *n'ont pu obtenir jusqu'à present aucune Justice des Tribunaux Anglois qu'ils ont reclamès, ou du Gouvernement auquel ils ont porté leurs Plaintes.* And in another Part of the Memorial it is put, *apres avoir en vain demandè des Reparations de ceux qui Seuls pouvoient les faire.*

The contrary of all which is manifest from the above State, and Lists hereto annexed.

In Six of the Cases specified, If such Captures ever were made, the *Prussian* Subjects were so well satisfied with the Restitution made by the Captors, that they never complained in any Court whatsoever of this Kingdom.

The rest were judged of, by a Court of Admiralty, the only proper Court to decide of Captures at Sea, both with respect to the Restitution, and the Damages and Costs; acting according to the Law of Nations, the only proper Rule to decide by: And Justice has been done by  
the

the Court of Admiralty so impartially ; that all the Ships, alledged in List A, to have been *Prussian*, were restored ; and all the Cargoes, mentioned in either List, A or B, were restored, excepting Fifteen, one of which is still undetermined.

And, in all the Cases in both Lists, Justice was done, so entirely to the Conviction of the private Conscience of the *Prussian* Claimants, that they have acquiesced under the Sentences, without appealing ; except in one single Instance, where the Part of the Sentence complained of was reversed.

Though the *Prussian* Claimants must know, that, by the Law of Nations, they ought not to complain to their own Sovereign, till Injustice, *in Re minime dubia*, was finally done them, past Redress ; and though they must know, that Rule of the Law of Nations held more strongly upon this Occasion, because the Property of the Prize was given to the Captors, and ought, therefore, to be litigated with them. The *Prussian*, who, by his own Acquiescence, submits to the Captors having the Prize, cannot afterwards with Justice make a Demand upon the State. If the Sentence was wrong, it is owing to the Fault of the *Prussian*, that it was not redressed. But, it is not attempted to be shewn even now, that these Sentences were unjust in any Part of them, according to the Evidence and Circumstances appearing

appearing before the Court of Admiralty, and that is the Criterion.

For as to the *Prussian* Commission to examine these Cases; *ex parte*, upon new Suggestions; it never was attempted in any Country of the World before: Prize, or not Prize, must be determined by Courts of Admiralty, belonging to the Power whose Subjects make the Capture: Every Foreign Prince in Amity, has a Right to Demand that Justice shall be done his Subjects in those Courts, according to the Law of Nations, or particular Treaties, where any are subsisting. If *in Re minime dubia* these Courts proceed upon Foundations directly opposite to the Law of Nations, or subsisting Treaties, the Neutral State has a Right to complain of such Determination.

But there never was, nor ever can be, any other Equitable Method of Tryal. All the Maritime Nations of *Europe* have, when at War, from the earliest Times, uniformly proceeded in this Way, with the Approbation of all the Powers at Peace. Nay, the Persons acting under this extraordinary and unheard of Commission from his *Prussian* Majesty, don't pretend to say, that in the Four Cases of Goods condemned here, for which Satisfaction is demanded in List A, the Property really belonged to *Prussian* Subjects: But they profess to proceed upon this Principle, evidently *false*, that, tho' these Cargoes belonged  
to

to the Enemy, yet being on Board *any Neutral Ship*, they were not liable to Enquiry, Seizure, or Condemnation.

Fourthly, *From the Questions, Rules, Reasonings, and Matters alledged in the said Memorial, Sentence of the Prussian Commissioners, and Exposition des Motifs, &c. the following Propositions may be drawn, as carrying the Appearance of Objections, to what has been above laid down.*

### First Proposition.

*That by the Law of Nations, the Goods of an Enemy cannot be taken on Board the Ship of a Friend; and this the Prussian Commissioners lay down as the Basis of all they have pretended to do.*

*Answer.* The Contrary is too Clear to admit of being disputed. It may be proved, by the Authorities of every Writer upon the Law of Nations; some of different Countries are referred to \*. It may be proved by the constant

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Practice

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\* *Il Consolato del Mare*, cap. 273, expressly says, The Enemy's Goods, found on Board a Friend's Ship, shall be Confiscated. And this is a Book of great Authority.

GROTIUS *de Jure Belli ac Pacis*, lib. iii, cap. 1, Section 5, numero 4, in the Notes, cites this Passage, in the *il Consolato*, and in his Notes, lib. iii, cap. 6, Sect. 6.

LOCCENIUS *de Jure Maritimo*, lib. ii, cap. 4, Sect. 12.

Practice, Antient and Modern, but the General Rule cannot be more strongly proved, than by the Exception which particular Treaties have made to it.†

## Second Proposition.

*It is alledged that Lord Carteret, in 1744, by two Verbal Declarations, gave Assurances in your Majesty's Name, that nothing on Board a Prussian Ship should be Seized, except Contraband; consequently, that all Effects, not Contraband, belonging to the Enemy, should be free, and*

VOET *de Jure Militari*, cap. 5, nu. 21.

HEINECCIUS, the learned *Prussian* before quoted, *de Navibus ob Veturam vititarum Mercium commissis*, Cap. 2, Sect. 9, is clear and explicit upon this Point.

BYNKERSHOECK *Questiones Juris Publici*, lib. i, cap. 14, per totum.

ZOUCH (an Englishman) in his Book *de Judio inter Gentes*, pars 2, Sect. 8, numero 6.

Treaty between *Great Britain* and *Sweden* 23 O<sup>r</sup>. 1661. Art. 12 and 13, Treaty between *Great Britain* and *Denmark*, 29 Nov. 1669, Art. 2d,— And the Passport or Certificate, settled by that Treaty, are Material as to this Point.

† Treaty between *France* and *England*, 24 Feb. 1677, Art. 8.

Treaty of *Utrecht* between *France* and *England*, 1713, Art. 17.

Treaty between *England* and *Holland*, 17 Feb. 1668, Art. 10.

Treaty between *England* and *Holland*, 1 Dec. 1674, Art. 8.

Treaty between *England* and *Portugal*, 10 July, 1654, Art. 23.

Treaty between *France* and the States General at *Utrecht*, 11 April, 1713, Art. 26.

and that these Assurances were afterwards confirmed in Writing by Lord Chesterfield the 5th of January, 1747.

*Answer.* The Fact makes this Question not very material, because there are but four Instances, in Lifts A or B, where any Goods, on Board a *Prussian* Ship, have been Condemned; and no Satisfaction is pretended to be demanded, for any of those Four Cargoes in Lifts A and B. However it may be proper to shew how groundless this Pretence is.

Taking the Words, alledged to have been said by Lord *Carteret*, as they are stated; They don't warrant the Inferences endeavoured to be drawn from them. They import no New Stipulation, different from the Law of Nations; but expressly profess to treat the *Prussians*, upon the same Foot with the Subjects of other Neutral Powers under the like Circumstances; *i. e.* with whom there was no particular Treaty. For the Reference to other Neutral Powers, cannot be understood to communicate the Terms of any particular Treaty. It is not so said. The Treaties with *Holland, Sweden, Russia, Portugal, Denmark, &c.* all differ. Who can say which was communicated? There would be no Reciprocity; the King of *Prussia* don't agree to be bound by the Clauses, to which other Powers, have, by their respective Treaties, agreed. No *Prussian* Goods, on Board an Enemy's Ship, have ever been Condemned



demned here; and yet they ought, if the Treaties with *Holland* were to be the Rule between *Great Britain* and *Prussia*; nay, if these Treaties were to be the Rule, all now contended for, on the Part of *Prussia*, is clearly wrong. Because, by Treaty, the *Dutch*, in the last Resort, are to apply to the Court of Appeal here.

*Treaty of Alliance between Great Britain and Holland, at Westminster the 6th of Feb. 1715-16, Article II.*

‘ Whereas some Disputes have happened, touching the  
 ‘ Explanation of the 12th Article of the Treaty Marine  
 ‘ in 1674. it is agreed and concluded, for deciding any  
 ‘ Difficulty upon that Matter, to declare, by these Pre-  
 ‘ sents, that by the Provisions mentioned in the said Ar-  
 ‘ ticle, are meant those which are received by Custom in  
 ‘ *Great Britain* and in the *United Provinces*, and always  
 ‘ have been received, and *which have been Granted, and*  
 ‘ *always are Granted, in the like Case, to the Inhabitants*  
 ‘ *of the said Countries, and to every Foreign Nation.*’

Lord *Carteret* is said twice to have refused, in which Monsieur *Andrié acquiesces*, to give any Thing in Writing, as not usual in *England*.

Supposing the Conversations to mean no more, than a Declaration of Course, that Justice should be done to the  
*Pruf-*

*Prussians*, in like Manner as to any other Neutral Power, with whom there was no Treaty ; there was no Occasion for Instruments in Writing ; because in *England* the Crown never interferes with the Course of Justice. No Order or Intimation is ever given to any Judge. Lord *Carteret* therefore knew that it was the Duty of the Court of Admiralty to do equal Justice, and that they would, of themselves, do what he said to Monsieur *Andrié*.

Had it been intended, by Agreement, to introduce, between *Prussia* and *England*, a Variation, in any Particular, from the Law of Nations ; and consequently, a New Rule, for the Court of Admiralty, to decide by ; it could only be done by a Solemn Treaty, in Writing, properly Authorized, and Authenticated. The Memory of it could not otherwise be preserved ; the Parties interested, and the Courts of Admiralty could not, otherwise, take Notice of it.

But Lord *Chesterfield*'s Confirmation, in a Letter of the 5th of *January* 1747, being relied upon ; the Books of the Secretary's Office have been searched, and the Letter to Monf. *Mitchell* is found, which is *verbatim* as follows.

H

à *White-*

à *Whitehall*, le 5 *Janv.* 1747-8.

“ *Monsieur,*

“ **A** YANT eu l'Honneur de recevoir les Ordres du  
“ Roy sur ce qui a formé le sujet du Memoire,  
“ que vous m'avez remis, du 8 de ce *Mois*, N. S. Je  
“ n'ai pas voulu tarder à vous informer, que sa Majesté,  
“ pour ne rien omettre, par où Elle peut temoigner ses  
“ Attentions envers le Roy, votre Maitre, ne fait nulle Diffi-  
“ culté de declarer, qu'Elle n'a jamais eu l'Intention, ni  
“ ne l'aura jamais, de donner le moindre Empechement  
“ à la Navigation des sujets *Prussiens*, tant qu'ils auront  
“ soin d'exercer leur Commerce d'une Maniere licite, et  
“ conformément à l'ancien Usage établi et reconnu parmi  
“ les Puissances Neutres.

“ Que Sa Majesté *Prussienne* ne peut pas ignorer, qu'il  
“ y a des Traités de Commerce qui subsistent actuelle-  
“ ment, entre La Grande *Bretagne*, et certains Etats Neu-  
“ tres, et qu'au Moyen des Engagemens formellement  
“ contractés de Part et d'autre, par ces mêmes Traités,  
“ tout ce qui regarde la Maniere d'exercer leur Commerce  
“ reciproquement, a été finalement constaté et réglé.

“ Qu'en même tems il ne paroît point, qu'aucun  
“ Traités de la Nature susdite existe à present, ou a ja-  
“ mais existé, entre Sa Majesté et le Roy de *Prusse* ;  
“ mais

“ mais, que pourtant, cela n’a jamais empêché que les Su-  
 “ jets *Prussiens* n’ayent été favorisés par *L’Angleterre*, par  
 “ rapport à leur Navigation, autant que les autres Nations  
 “ Neutres: Et cela étant, Sa Majesté ne presuppõe pas,  
 “ que l’Idée du Roy votre Maitre, feroit d’exiger d’Elle  
 “ des Distinctions, encore moins des Preferences, en fa-  
 “ veur de ses Sujets à cet égard.

“ Que de plus Sa Majesté *Prussienne* est trop éclairée  
 “ pour ne pas connoitre, qu’il y a des Loix fixes et établies  
 “ dans ce Gouvernement, dont on ne peut nullement  
 “ s’écarter; et que s’il arrivoit que la Marine *Angloise*  
 “ s’avisât de faire la moindre Injustice aux Sujets Commer-  
 “ çans du Roy votre Maitre, il y a un Tribunal ici, fa-  
 “ voir, la Haute Cour de l’Amirauté, à laquelle Ils se  
 “ trouvent en droit de s’adresser, et de porter leurs  
 “ Plaintes; assurés d’avance, en pareil Cas, qu’on leur  
 “ y rendra bonne Justice; Les Procédés Juridiques de la-  
 “ dite Cour étant et ayant été de tout tems hors d’At-  
 “ teinte, et irréprochables; Temoin, Nombre d’Exem-  
 “ plés, où des Vaisseaux Neutres, pris illicitement, ont  
 “ été restitués avec Fraix et Dommages aux Proprie-  
 “ taires.

“ Voici ce que le Roy m’a ordonné de vous repondre  
 “ sur le Contenu de votre dit Memoire; Et Sa Majesté  
 “ ne fauroit que se flatter, qu’en Conséquence de ce que  
 “ Je viens d’avancer, il ne restera plus rien à desirer au  
 “ Roy

“ Roy votre Maitre relativement à l’Objet dont il est  
“ question ; Et le Roy s’en croit d’autant plus assuré,  
“ qu’il est persuadé que sa Majesté *Prussienne* ne voudroit  
“ rien demander, qui ne fut équitable.

“ Je Suis avec bien de la Consideration,

*Monseigneur,*

*Votre très humble, & très*

*Obeissant Serviteur,*

CHESTERFIELD.

There need no Observations. It is Explicit, and in Express Terms puts *Prussia* upon the Foot of other Neutral Powers with whom there was no Treaty ; and points out the proper Way of applying for Redress.

The verbal Declarations, made by Lord *Carteret* in 1744, which are said to have been confirmed by this Letter from Lord *Chesterfield*, cannot have meant more than the Letter expresses.

And it is manifest, by the above Extract from Monsieur *Andrié*’s Letter to his *Prussian* Majesty, that in *May* 1747, Monsieur *Andrié* himself understood, that Goods of the Enemy, taken on Board Neutral Ships, ought to be condemned as Prize.

It is evident, from Authentick Acts, that the Subjects of *Prussia* never understood that any new Right was communicated to them.

Before

Before the Year 1746, the *Prussians* don't appear to have openly engaged in Covering the Enemy's Property.

The Men of War and Privateers could not abstain from Captures, in Consequence of Lord *Carteret's* verbal Assurances in 1744 ; because they never were nor could be known : And there was no Occasion to notify them, supposing them only to promise impartial Justice. For all Ships of War were bound to act, and Courts of Admiralty to judge, according to the Law of Nations, and Treaties.

Till 1746, the *Prussian* Documents were, a Certificate of the Admiralty, upon the Oath of the Builder, that the Ship was *Prussian* built ; and a Certificate of the Admiralty, upon the Oath of the Owner, that the Ship was *Prussian* Property.

From 1746, the *Prussians* engaged in the gainful Practice of Covering the Enemy's Goods ; but were at a Loss in what Shape, and upon what Pretences, it might best be done.

On Board the Ship the 3 *Soeurs*, was found a Pass, bearing Date at *Stettin* the 6th of *October* 1746, under the Royal Seal of the *Prussia* Regency of *Pomerania*, &c. alledging the Cargo, which was Ship Timber, bound for *Port l'Orient*, to be *Prussian* Property, and, in Consequence thereof, claiming *Freedom of the Ship*.

Claiming Freedom to the Ship, from the Property of the Cargo, being quite new, the Proposition was after-

wards reverfed: And on Board a Ship, called the *Jumeaux*, was found a Pafs, bearing Date at *Stettin* the 27th of *June* 1747, under the Royal Seal, &c. alledging the Ship to be *Pruffian* Property, and, in Confequence thereof, claiming *Freedom to the Goods*.

But this Pafs was not folety relied on, for there was alfo found on Board the fame Ship, another Pafs, bearing Date at *Stettin* the 14th of *June* 1747, under the Royal Seal, &c. alledging the Cargo to be *Pruffian* Property.

And it is remarkable, that the Oaths, upon which thefe Paffes were granted, appeared manifeftly to be falfe: And neither of the Cargoes, to which they relate, are now fo much as alledged to have been *Pruffian* Property in faid Lifts A or B.

It being mentioned, in the faid *Expoftion des Motifs*, &c. that *Monf. Michell*, in *September* 1747, made verbal Representations to Lord *Chefterfield*, in Refpect to the Cargo, taken on Board the faid Ship called the 3 *Soeurs*, which was claimed as *Pruffian* Property; and no Mention being made in Lifts A and B of the faid Cargo; we directed the Proceedings in that Caufe to be laid before us, where it appears in the fulleft and cleareft Manner, from the Ship-Papers and Depofitions, that the Cargo was Timber, laden on the Account, and at the Rifque, of *French* Men, to whom it was to be delivered,  
at

at Port l'Orient, they paying Freight according to Charter-Party. That the Prussian Claimant was neither Freighter, Lader, or Consignee ; and had no other Interest or Concern in the Matter, than to lend his Name and Conscience : For he swore, that the Cargo was his Property, and Laden on or before the 6th of October, 1746 ; and yet the Ship was then in Ballast, and the whole of the Cargo in Question was not Laden before May 1747.

Several other Prussian Claims, had, in like Manner, come out so clearly to be merely colourable, that Mons. Andrié, from his said Letter, <sup>29 May,</sup><sub>9 June,</sub> 1747, appears to have been ashamed of them.

### Third Proposition.

*That Lord Carteret, in his said two Conversations, specified, in your Majesty's Name, what Goods should be deemed Contraband.*

*Answer.* The Fact makes this Question totally immaterial, because no Goods condemned as Contraband, or which were alledged to be so, are so much as now suggested to have been Prussian Property in the said Lists A and B ; and, therefore, whether as Enemy's Property, or Contraband ; they were either Way rightly condemned ; and the Bills of Lading being false, the Ships could not be intitled to Freight.

But



But, if the Question was material, the verbal Declarations of a Minister in Conversation, might shew what he thought Contraband by the Law of Nations; but never could be understood to be equivalent to a Treaty, derogating from that Law.

All the Observations, upon the other Part of these verbal Declarations, hold equally as to this.

#### Fourth Proposition.

*That the British Ministers have said, that these Questions were decided according to the Laws of England.*

*Answer.* They must have been misunderstood; for the Law of *England* says, that all Captures at Sea, as Prize, in Time of War, must be judged of in a Court of Admiralty, according to the Law of Nations, and particular Treaties, where there are any.

There never existed a Case, where a Court, judging according to the Laws of *England* only, ever took Cognizance of Prize.

The Property of Prizes being given, during the last War, to the Captors; your Majesty could not arbitrarily Release the Capture, but left all Cases to the Decision of the proper Courts, judging by the Law of Nations and Treaties, where there were any: And it never was imagined, that the Property of a Foreign Subject, taken as Prize on the High Seas, could be affected by Laws peculiar to *England*.

Fifth

## Fifth Proposition.

*That your Majesty could no more erect Tribunals for trying these Matters than the King of Prussia.*

*Answer.* Each Crown has, no doubt, an equal Right to erect Admiralty Courts, for the Tryal of Prizes taken by Virtue of their respective Commissions; but neither has a Right to try the Prizes taken by the other, or to reverse the Sentences given by the other's Tribunal. The only regular Method of rectifying their Errors, is, by Appeal to the superior Court.

This is the clear Law of Nations; and, by this Method, Prizes have always been determined, in every other Maritime Country of *Europe*, as well as *England*.

## Sixth Proposition.

*That the Sea is Free.*

*Answer.* They who maintain that Proposition in its utmost Extent, don't dispute but that when two Powers are at War, they may seize the Effects of each other upon the High Seas, and on Board the Ships of Friends: Therefore that Controversy is not in the least applicable upon the present Occasion. \*

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\* This appears from *Grotius*, in the Passages above cited, *Lib. 3. Cap. 1. Sect. 5. Nu. 4.* in his Notes. And *Lib. 3. Cap. 6. Sect. 6.* in his Notes.

## Seventh Proposition.

Great Britain issued Reprizals against Spain, on Account of Captures at Sea.

*Answer.* These Captures were not made in Time of War with any Power.

They were not judged of by Courts of Admiralty, according to the Law of Nations and Treaties, but by Rules, which were themselves complained of, in Revenue Courts: The Damages were afterwards admitted, liquidated at a certain Sum, and agreed to be paid by a Convention, which was not performed. Therefore Reprizals issued; but they were general. No Debts due here to Spaniards were stopped; no Spanish Effects here were seized. Which leads to one Observation more.

The King of Prussia has engaged his Royal Word to pay the Silesia Debt to private Men.

It is negotiable, and many Parts may have been assigned to the Subjects of other Powers. It will not be easy to find an Instance, where a Prince has thought fit to make Reprizals, upon a Debt, due from himself to private Men. There is a Confidence that this will not be done; a private Man lends Money to a Prince, upon the Faith of an Engagement of Honour, because a Prince cannot be compelled, like other Men, in an adverse Way, by a Court of Justice. So scrupulously did England, France and Spain

*Spain* adhere to this Public Faith, that, even during the War, they suffered no Enquiry to be made, whether any Part of the Public Debts was due to Subjects of the Enemy, tho' it is certain, many *English* had Money in the *French* Funds, and many *French* had Money in ours.

This Loan to the late Emperor of *Germany*, *Charles* the VIth, in *January* 1734-5, was not a State Transaction, but a mere private Contract with the Lenders, who advanced their Money, upon the Emperor's obliging himself, his Heirs and Posterity, to repay the Principal with Interest, at the Rate, in the Manner, and at the Times in the Contract mentioned, *without any Delay, Demurr, Deduction, or Abatement whatsoever*; and, lest the Words and Instruments made use of should not be strong enough, he promises to secure the Performance of his Contract, *in and by such other Instruments, Method, Manner, Form, and Words, as should be most effectual and valid, to bind the said Emperor, his Heirs, Successors and Posterity, or as the Lenders should reasonably desire.*

As a specific real Security, he mortgaged his Revenues, arising from the Dutchies of *Upper* and *Lower Silesia*, for Payment of Principal and Interest; and the whole Debt, Principal and Interest, was to be discharged in the Year 1745. If the Money could not be paid out of the Revenues of *Silesia*, the Emperor, his Heirs and Posterity, still remained Debtors, and were bound to pay. The  
Eviçtion

Eviotion or Destruction of a Thing mortgaged, don't extinguish the Debt, or discharge the Debtor.

Therefore the Empress-Queen, without the Consent of the Lenders, made it a Condition of her Yielding the Dutchie of *Silesia* to his *Prussian* Majesty, that he should stand in the Place of the late Emperor, in Respect of this Debt.

The Seventh of the Preliminary Articles, between the Queen of *Hungary* and the King of *Prussia*, signed at *Breslau*, the 11th of *June*, 1742, is in these Words; “ Sa  
 “ Majesté le Roi de *Prusse* se charge du seul Payement  
 “ de la Somme hypothéquée sur la *Silesie*, aux Marchands  
 “ *Anglois*, selon le Contract signé à Londres, le 7me de  
 “ Janvier, 1734-5.”

This Stipulation is confirmed by the Ninth Article of the Treaty between their said Majesties, signed at *Berlin*, the 28th of *July*, 1742.

Also renewed and confirmed by the Second Article of the Treaty between their said Majesties, signed at *Dresden*, the 25th of *December*, 1745.

In Consideration of the Empress Queen's Cession, his *Prussian* Majesty has engaged to her, that he will pay this Money, *selon le Contract*, and consequently has bound himself to stand in the Place of the late Emperor, in Respect of this Money, to all Intents and Purposes.

The

The late Emperor could not have seized this Money, as Reprizals, or even, in Case of open War between the two Nations, because his Faith was engaged to pay it, without any *Delay, Demurr, Deduction, or Abatement whatsoever*. If these Words should not extend to all possible Cases, he had plighted his Honour to bind himself, by any other Form of Words, more effectually to pay the Money; and therefore was liable at any Time to be called upon, to declare expressly, that it should not be seized as Reprizals, or in Case of War; which is very commonly expressed, when Sovereign Princes, or States, borrow Money from Foreigners. Therefore, supposing for a Moment, that his *Prussian* Majesty's Complaint was founded in Justice, and the Law of Nations, and that he had a Right to make Reprizals in General, he could not, consistent with his Engagements to the Empress Queen, seize this Money as Reprizals. Besides, this whole Debt, *according to the Contract*, ought to have been discharged in 1745. It should, in Respect of the private Creditors, in Justice and Equity, be considered, as if the Contract had been performed; and the *Prussian* Complaints don't begin till 1746, after the whole Debt ought to have been paid.

Upon this Principle of natural Justice, *French* Ships and Effects, wrongfully taken, after the *Spanish* War, and before the *French* War, have, during the Heat of the War with *France*, and since, been restored by Sentence of

your Majesty's Courts, to the *French* Owners. No such Ships or Effects ever were attempted to be confiscated, as Enemies Property here, during the War; because, had it not been for the Wrong first done, these Effects would not have been in your Majesty's Dominions. So, had not the Contract been first broke, by Non-payment of the whole Loan in 1745, this Money would not have been in his *Prussian* Majesty's Hands.

Your Majesty's Guarantee of these Treaties is entire, and must therefore depend upon the same Conditions, upon which the Cession was made by the Empress Queen.

But this Reasoning is, in some Measure, superfluous; because, if the making any Reprizals upon this Occasion, be unjustifiable, which we apprehend we have shewn, then it is not disputed, but that the Non-payment of this Money would be a Breach of his *Prussian's* Majesty's Engagements, and a Renunciation, on his Part, of those Treaties.

All which is most humbly submitted to your Majesty's Royal Wisdom.

GEO. LEE.

G. PAUL.

D. RYDER.

W. MURRAY.

January 18, 1753.

*TRANSLATION of the Earl of Chesterfield's  
Letter to Monsr. Michell.*

*Whitchall, Jan. 5, 1747-8.*

S I R,

**H**AVING had the Honour to receive the King's Orders upon the Subject of the Memorial, which you deliver'd to me on the 8th Instant, N. S. I would not delay informing you, That His Majesty, in order to omit nothing, whereby He may shew His Attention to the King your Master, makes no Difficulty in declaring, That His Majesty has never had, or will have, any Intention, to give any Interruption to the Navigation of the *Prussian* Subjects, as long as they shall take Care to carry on their Commerce in a lawful Manner, and conformable to the ancient Usage as establish'd and acknowledg'd, amongst neutral Powers.

His *Prussian* Majesty cannot be ignorant, that there are Treaties of Commerce actually subsisting between *Great Britain* and certain Neutral States, and that by Means of the Engagements formally contracted on each Side by those Treaties, every Thing relating to the Manner of reciprocally carrying on their Commerce, has been finally settled and regulated.

At the same Time, it does not appear that any such Treaty exists at present, or ever did exist, between His Majesty and the King of *Prussia*: Nevertheless, that has never hindered the *Prussian* Subjects being favoured by *England*, with respect to their Navigation, as much as other Neutral Nations: And His Majesty does not suppose, that the King your Master means to require Distinctions from His Majesty, much less any Preferences, in Favour of His Subjects in this Point.

His *Prussian* Majesty is too well informed, not to know, that there are in this Government fix'd and establish'd Laws, which cannot be departed from; and that in Case any *English* Ships of War should commit the least Injustice to the Trading Subjects of the King your

M

Master,



Master, here is a Tribunal, *viz.* The High Court of Admiralty, where they have a Right to apply, and make their Complaints ; and they may be previously assured, that, in such Case, impartial Justice will be administred to them ; the Juridical Proceedings of the said Court being, and having ever been, unimpeach'd and irreproachable, as appears by numerous Examples of Neutral Vessels illegally taken, having been restored, with Costs and Damages, to the Proprietors.

This is the Answer the King has ordered me to give, upon the Contents of your said Memorial ; and His Majesty cannot but flatter himself, that, in Consequence hereof, the King your Master's Desire will be fully answered, with relation to the Point in Question ; and of which His Majesty is the more assured, as he is persuaded that the King of *Prussia* would not require any Thing, but what is Equitable.

*I am,*

*With much Consideration,*

*S I R,*

*Your most obedient,*

*And most humble Servant,*

**CHESTERFIELD.**

*TRANSLATION of Mr. PETER TRAPAUD'S  
Declaration of his having made Satisfaction to the  
Prussians for the Damage received by the Ship St. John,  
N<sup>o</sup> 16. in List A.*

**I**N the Exposition, which his *Prussian* Majesty has publish'd, of such Ships of his Subjects, as were taken by the *English* in the last War; I have observed, in the List A, N<sup>o</sup>. 16, that the Ship *St. John, John Grosse*, Captain, is therein mention'd, as having received some Damages to the Prejudice of the *Prussian* Owners. As the Fact is known to me, as I was the sole Owner of her Cargo, I do hereby, as such, testify the Truth, for the Satisfaction of all whom it may concern. And I cannot conceive, how the *Prussian* Subjects dare demand an Indemnification, which they have already more than received, as I am going to convince them.

In the Month of *November* 1747, I ordered the said Ship to be freighted at *Bordeaux*, and loaded at *Libourne* with 158 $\frac{1}{2}$  Tons of *WhiteWine*. On the 1st of *December* following, that Ship put out to Sea; on the 11th of the said Month, she got as far as the Downs, where she was met by an *English* Privateer, called the *Prince of Orange*, who sent six of his Men on board the *Prussian* Ship, and had the *Prussian* Pilot brought on board him, with the Ship-Papers and Documents, in order to their being examined. On the 12th of the said Month, as she lay at an Anchor, a great Storm arose from the W. S. W, which obliged the *Prussian* Captain, with the Consent of his Crew, and of the six *Englishmen*, who were then on board his Ship, to cut his Cable, in order to drive off to Sea. The Ship got afterwards into *Browershaven* Inlet in *Holland*, on the 15th of the said Month of *December*, without any other Damage, than the Loss of Part of her Cable, and of an Anchor, and arrived at *Rotterdam*, the 21st of the said Month. All this is proved by the Declaration of  
both

both the Captain and his Crew, made, on the 4th of *January* 1748, before *Jacob Bremer*, Notary Publick at *Rotterdam*; and, afterwards, sworn to, on the 6th of the said Month, before the Commissioners of the Chamber of maritime Affairs.

After the Ship was unloaded, the Captain gave in to me his Account for gross Average; consisting of the following Articles:

1. For the Loss of his Cable and Anchor.
2. For the Maintaining, during eight Days, the Six Men, who had been put on Board his Ship by the *English* Privateer.
3. For a Passport, I procured for him, from the *Prussian* Envoy at the *Hague*, which cost 3 or 4 Florins.

I paid him, for my Share, in that gross Average 704 Florins, *Holland* Currency, over and above 105 Florins which I gave Captain *Grosse* as a Present; and 10 Florins 10 Stivers, I gave as a Present to the Crew of his Ship: Besides all this, it cost me 20 Florins, or thereabouts, in *England*, which Mess<sup>rs</sup> *Simond*, (Brothers) had disbursed, by my Order, for the *Prussian* Pilot, who remain'd on Board the Privateer, after the Storm had parted them.

Those who understand the Navigation, and Fitting out of Ships, must allow, that the *Prussian* Owners will find themselves more than reimbursed for all their Pretensions, by Means of the 839 Florins 10 Stivers, *Holland* Currency, which I have paid them; and that they cannot, with any Foundation, make any other Demands.

All that I have alledged above, can be verify'd by authentick Vouchers, (except the Presents or Gratuities to the Captain and his Crew, amounting to 115 Florins 10 Stivers, for which I took no Receipt.) In Witness whereof I have signed this present Declaration. *Rotterdam*, *January* 30, 1753.

*Peter Trapaud*, Jun<sup>r</sup>

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**L I S T** of all the *Prussian* Ships taken by *British* Armaments at Sea only, as those judicially proceeded upon, together with the Judgments given in the Majesty's **L I S T** marked **A**.

N <sup>o</sup> of Ships.	Ships, which (if taken) were restored by the Captors, upon Examination, without either Party applying to a Court of Justice.	Ships and Goods restored, with all Cofts and Damages attending the Capture.	Ships restored with Freight, according to the Bills of Lading, for such Goods, which were found to be the Property of the Enemy, and condemned as Prize.	Ships and Goods restored, but without Cofts, from Circumstances arising from the Case.
1	La Frederique Amitie, Capitaine <i>Sprenger</i> .			
2				
3				
4	La Catharine Christine, Capit. <i>Frederick Berend</i> .	L'Anne Elizabeth, Capit. <i>Daniel Schultz</i> , Cofts and Damages, 2801 <i>l.</i> 12 <i>s.</i> 1 <i>d.</i>		
5				
6				
7				
8				
9				
10				
11				
12			L'Aigle D'Or, Capit. <i>Onne Arends</i> .	
13				
14			La Dorothee Sophie,	

ents at Sea, during the last War, as well those detained for Examination  
 ents given in the Admiralty Courts of *Great-Britain* thereupon, tallying with his *Prussian*

Ships and Goods re-  
 d, but without  
 s, from Circum-  
 ces arising from the

Ships and Cargoes restored,  
 paying Costs.

In these Cases, it either ap-  
 peared, that the Ship had not  
 the usual Evidence of Property,  
 according to the Custom of the  
 Sea; or from the Ship-Papers,  
 or Examination of the Crew,  
 there appeared just Reason to  
 presume the Cargo to belong  
 to the Enemy, and the Neuter  
 Claimant, declined proving his  
 Property, by strict legal Evi-  
 dence; and obtained Restitu-  
 tion, on the Faith of his own  
 Affidavit; and, in these Cases,  
 Courts of Admiralty have al-  
 ways made the like Decrees.

Cargoes, or part of them,  
 condemned as contraband, and  
 not now alledged, in List A  
 or B, to have been *Prussian*  
 Property, and therefore were  
 certainly Prize of War.

Appeals from the Ad-  
 miralty Decrees.

Les Jumeaux,  
 Capit. *Kruth*.

La Dame Juliene,  
 Capit. *Martin Prest*.  
 Le Frederick II. Roy de Prusse,  
 Capit. *Chretien Schultz*.  
 Le Vaisseau au bon Vent.  
 Capit. *Michel Furiansen*.

Le Soliel D'or,  
 Capit. *Jacob Ridder*.

La Daageroud,  
 Capit. *Martin Sperwien*.

Le Frederick II. Roy de Prusse,  
 Capit. *Chretien Schultz*.

Les Deux Freres,  
 Capit. *Jon Hallen*.

Le Jeune Andrè,  
 Capit. *Henri Barckborn*.

3		L'Anne Elizabeth, Capit. Daniel Schultz, Cofts and Damages, 2801 l. 12 s. 1 d.		
4	La Catharine Christine, Capit. Frederick Berend.			
5				
6				
7				
8				
9				
10				
11			L'Aigle D'Or, Capit. Onne Arends.	
12				
13				
14			La Dorothee Sophie, Capit. Pierre Kettelhuth.	
15			La Deux Freres Capit. Aug. Augustinus.	
16	Le St. Jean *, Capit. Jean Grosse.			
17	Le Jeune Tobie, Capit. Paul Otto.			
18				Le Petit David, Cap. Michael Bugdabl.

\* On the 3d of February, the Duke of Newcastle received a Letter from Mr. Wolters, Hi

DANS l'Exposition que Sa Majesté Prussienne a donnée au Public, des Vaisseaux de ses Sujets pris par les Anglois dans la mer de Grose, y est notté comme ayant reçu quelques Dommages, au Prejudice des Proprietaires Prussiens. Comme le fait m'est connu, je ne puis comprendre, comment les Sujets Prussiens osent demander un Dedommagement, qui ne leur appartient pas.

Dans le Mois de Novembre 1747. Je fis fretter à Bordeaux, et charger à Libourne le dit Navire avec 158 $\frac{1}{2}$  Tonneaux de Vin blanc. Le dit Navire fut rencontré par le Corsaire Anglois, nommé le Prince d'Orange, qui envoya à bord du Navire Prussien six Hommes de son Equipage, et le fit prisonnier. Le 12. du dit Mois, étant à l'Ancre sous les Cingles, il s'eleva une furieuse Tempete de la Part du W. S. W. qui obligea le Capitaine Prussien de gagner la Mer. Ce Navire entra ensuite dans le Passage de Browerhave en Hollande, le 15<sup>e</sup>. du dit Mois de Decembre, sans avoir eu d'Autre Evénement. Tout ceci est constaté par la Declaration du Capitaine et de son Equipage, passée, le 4 Janvier 1748, pardevant les Juges de la Chambre de la Marine.

Après que le Navire fut dechargé, le Capitaine me fit fournir son Compte d'Avarie grosse, dans lequel il portoit les Articles suivants.

1. Pour la Perte de son Cable, et de son Ancre.
2. Pour la Nourriture de 8 Jours à 6 Hommes qui avoient été mis, par le Corsaire Anglois, sur son bord.
3. Pour un Passeport que Je lui fis donner à la Haye par l'Envoyé de Prusse, qui couta 3 à 4 Florins.

Je lui payai, pour ma Portion, dans cette Avarie grosse, 704 Florins, Argent courant d'Hollande, en outre 105 Florins dont Je lui payai, pour sa Portion, 52 Florins. Outre tout ceci, Il m'en a couté 20 Florins ou environ, en Angleterre, pour autant que Messrs. Simond Freres avoient déboursé par eux-mêmes, pour les frais de Navigation, et de l'Armement de Navire, ne pourront disconvenir, que les Proprietaires Prussiens se contentent de leurs Pretensions; et s'ils peuvent, avec quelque Fondement, en demander d'autres.

Tout ce que J'avance ci dessus peut se verifier par des Pieces authentiques, (à la reserve des Presents, ou Gratifications, au Capitaine et à son Equipage, qui ont été accordés par Sa Majesté Prussienne.) Je prie Messrs. les Juges de la Chambre de la Marine, de vouloir bien signer la présente Declaration. Rotterdam, ce 30 Janvier 1753.

The above Declaration was signed in my Presence; and the original Vouchers, quoted in the same, have been produced to me.

	<p>La Dame Juliene, Capit. <i>Martin Prest.</i></p> <p>Le Frederick II. Roy de Prusse, Capit. <i>Chretien Schultz.</i></p> <p>Le Vaisseau au bon Vent. Capit. <i>Michel Juriansen.</i></p>	<p>Capit. <i>Isaacs.</i></p>	
	<p>La Daageroud, Capit. <i>Martin Sperwien.</i></p>	<p>Le Soliel D'or, Capit. <i>Jacob Ridder.</i></p>	
	<p>Les Deux Freres, Capit. <i>Jon Hallen.</i></p>	<p>Le Frederick II. Roy de Prusse, Capit. <i>Chretien Schultz.</i></p>	
		<p>Le Jeune André, Capit. <i>Henri Barckborn.</i></p>	
<p>Petit David, <i>Michael Bugdabl.</i></p>			<p>Le Petit David Capit. <i>Michael Bugdabl.</i></p>

Mr. Wolters, His Majesty's Agent at Rotterdam, enclosing the following Declaration :

par les Anglois dans la dernière Guerre ; J'ai remarqué dans la Liste A, N° 16, que le Navire le St. Jean, Capitaine Jean le fait m'est connu, ayant été seul Propriétaire de sa Cargaïson, Je veux en cette Qualité rendre Temoignage à la Verité, pour le Dedommagement, qu' ils ont déjà plus que reçu, comme Je vais les en convaincre.

Tonneaux de Vin blanc. Le 1<sup>er</sup> de Dec. suivant, ce Navire mit en Mer ; Le 11. du dit Mois, Il se trouva à la hauteur des Dunes ; six Hommes de son Equipage, et fit venir à son bord le Pilote Prussien avec les Papiers de mer, pour en faire l'Examen. Le Capitaine Prussien, du Consentement de son Equipage, et des six Anglois pour lors dans son bord, de couper le Cable pour le 21<sup>er</sup> de Decembre, sans avoir eu d'autre Dommage que la Perte d'une Partie de son Cable, et d'une Ancre, et arriva ensuite à Rotterdam le 21<sup>er</sup> de Janvier 1748, pardevant *Jacob Bremer*, Notaire Public dans Rotterdam ; ensuite fermentée, le 6<sup>e</sup> du dit Mois, pardevant les Commis-

ortoient les Articles suivants :

de 105 Florins dont Je fis Present au Cap<sup>ne</sup>. Grosse, et 10. 10<sup>s</sup>. aussi de Present aux Matelots, qui composoient son Equipage. J'avoient deboursé par mon Ordre pour le Pilote Prussien qui etoit resté à bord du Corsaire, lorsque la Tempete les separa.

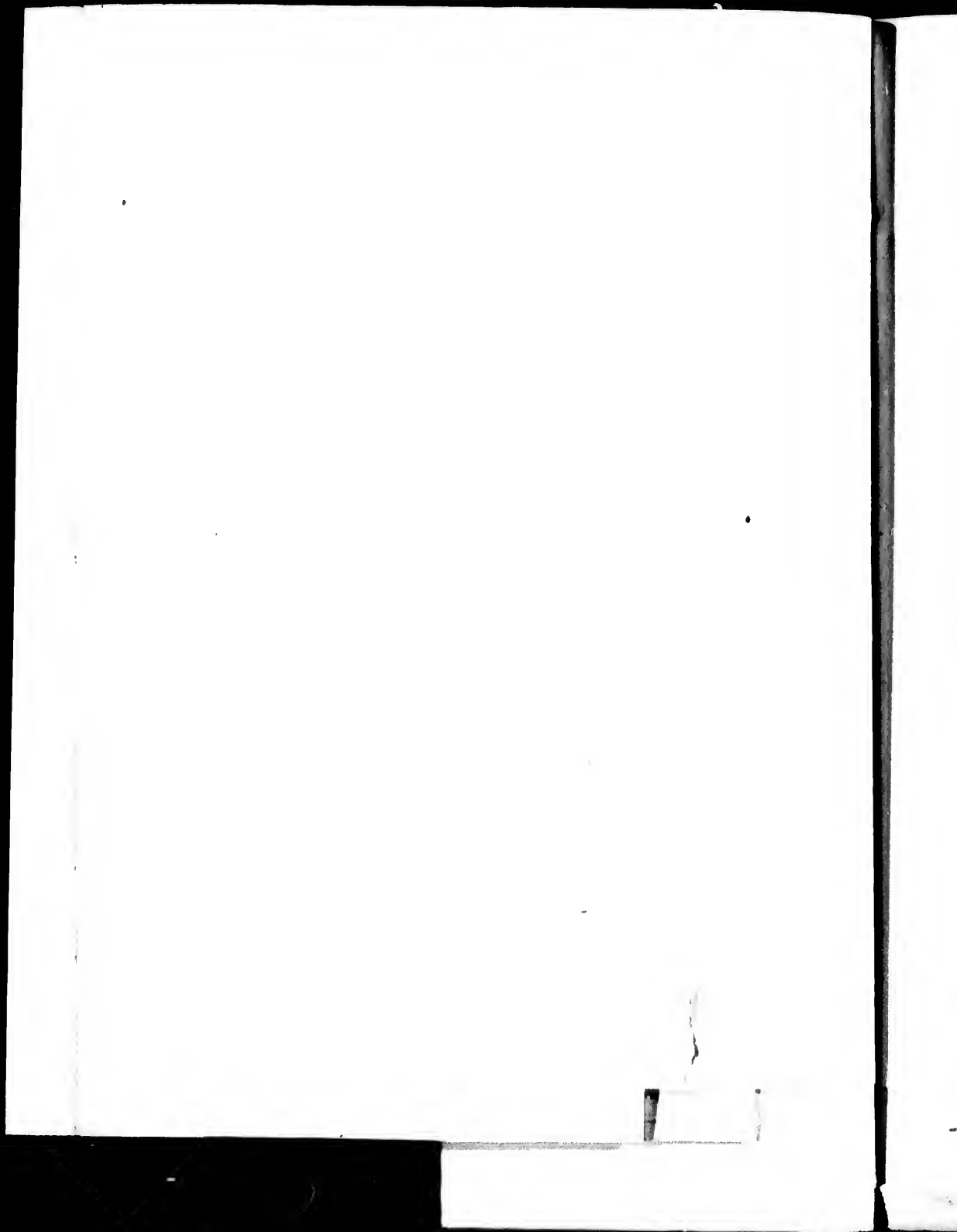
Propriétaires Prussiens se trouvent, au Moyen de 839. 10<sup>s</sup>. courans d'Hollande, que Je leur ai payés, plus que remboursés de toutes

Gratifications, au Capitaine ou à son Equipage, Montant à 115. 10<sup>s</sup>. dont je n'ai pas retiré de Quittance,) en vertu dequoi J'ai  
*Pierre Trapaud, le Jeune.*

been produced to me. Witness my Hand and Seal.—Rotterdam, January the 30th, 1753.

*R. Wolters. (L. S.)*





whose Cargoes the Subjects of *Prussia*  
y's Courts of Admiralty thereupon, tallying

Goods.

For what Cause.

Annealed

LIST of all the Neutral Ships, taken by *British* Ships during Claim to have been interested; together with the Judgments given by with his *Prussian* Majesty's Lists marked B.

N <sup>o</sup>	Ships Names.	If taken, released, by the Captors, on Examination, without either Party applying to a Court of Justice.	In what Voyage taken.	Judg as to
1	La Cecile, Capitaine <i>Bis Sweenfen.</i>		Cette to Altena	Restored
2	Le Nahring, Capit. <i>Christian Tiedeman.</i>		Rochelle to Bourdeaux	Restored
3	Le Demoiselle Jeanne, Capit. <i>Joachim Peyr.</i>		Hambourg to Cadiz	Restored
4	Le Carthavener Weiff, Capit. <i>Jean H. me.</i>		Hambourg to Cadiz	Restored
5	L'Anne Elizabeth, Capit. <i>Grisden Vau.</i>		Hambourg to Cadiz	Restored
6	Le Gustave Prince Royal Capit. <i>Berthez Muhl.</i>		Hambourg to Cadiz	Restored
7	Le Jeune Benjamin, Capit. <i>Henri Newkilling.</i>		Hambourg, to Cadiz	Restored
8	Le Prince Frederick, Capit. <i>Jean Hartmann.</i>		Hambourg to Bilbao and Bayonne	Restored
9	Le Marie Joseph, Capit. <i>Fearier Rouge.</i>		Hambourg to Cadiz	Restored
10	L'Union, Capit. <i>Jean Struckmann.</i>		Bordeaux to Hambourg	Restored
11	Le Neptune, Capit. <i>Sonder Heeren.</i>		Nants to Hambourg	Restored
12	Le St. Paul, Capit. <i>Gent Hinrichsen.</i>		Nants to Hambourg	Restored
13	La Couronne, Capit. <i>Pierre Claffen.</i>		Nants to Hambourg	Restored
14	La Demoiselle Catherine, Capit. <i>Witke de Pries.</i>		Rochelle to Altena	Restored
15	La Concorde, Capit. <i>Claes Eickels.</i>		Rochelle to Hambourg	Restored
16	La Feaune, Capit. <i>Gorkard Roger Atag.</i>		Charente to Hambourg	Restored
17	L'Amitie, Capit. <i>Jean Quimann.</i>		Rochelle to Hambourg	Restored
18	Le Jeune Prince Chretien, Capit. <i>Jean Christine Leuven.</i>		Marselles to Hambourg	Restored
19	La Dem <sup>o</sup> . Marguerite, Capit. <i>Henri Bichouerg.</i>		Bordeaux to Hambourg	Restored
20	Le Roxier, Capit. <i>Pierre Claffen.</i>		Bordeaux to Hambourg	Restored
21	La Marie Sophie, Capit. <i>Christian Gregersen.</i>		Rochelle to Hambourg	Restored
22	L'Anne Sophie, Capit. <i>Henri Horn de Wolgast.</i>	Released. — — — —	Bordeaux to Koningberg	—
23	Le Hop de Danzig, Capit. <i>Cowade Harlach.</i>		Bordeaux to Danzick	Restored
24	Le Jeune Jeanne, de Petersbourg, Capit. <i>J. van Siefers.</i>		Bordeaux to Hambourg	Restored
25	Le Gregoir et de Breme, Capit. <i>Jacob Muller.</i>		Bordeaux to Hambourg	Restored
26	La Jeune Catherine, Commanlé par le Capt. <i>Kupper,</i> ensuite par le Capt. <i>Elker.</i>	Released. — — — —	Bordeaux to Hambourg	—
27	Les Six Socurs, de Lubeck, Capit. <i>Pierre Zaan.</i>		Bordeaux to Lubeck	Restored
28	La Ste. Anne, de Hambourg, Capit. <i>Abraham Peterfen.</i>		Bordeaux to Hambourg	Restored
29	Le Jeune Eldert, de Hambourg, Capit. <i>Gaspel Auvén.</i>		Roan to Hambourg	Restored
30	Le Juste Henri, de Hambourg, Capit. <i>Henri Elkes.</i>		Bordeaux to Hambourg	Restored
31	L'Elizabeth, Capit. <i>Saeren Paterfen.</i>		Hambourg to Bourdeaux	Restored
32	La Demoiselle Claire, Capit. <i>Herman Claffen Priest.</i>		Hambourg to Roan	Restored
33	L'Adolph Frederic, Capit. <i>Jonas de Haspen.</i>		Marselles to Hambourg	Restored

\* On the 29th of January, Affidavits were exhibited in the Court of Admiralty, and Sentence prayed o

*Prussia* Ships during the last War, in whose Cargoes the Subjects of *Prussia* Judgments given by his *Britannick* Majesty's Courts of Admiralty thereupon, tallying

Part Voyage taken.	Judgment, as to Ship.	Judgment, as to Goods.	For what Cause.	Appealed.
Altena	Restored	Restored	On Affidavits of the Property.	
to Bourdeaux	Restored	Restored	On Affidavits of the Property.	
to Cadiz	Restored	Restored	On Affidavits of the Property.	
to Cadiz	Restored	Restored	On Affidavits of Property.	
to Cadiz	Restored	Part restored	On Affidavits of Property.	
to Cadiz	Restored	Part condemned	Want of Affidavits as to the Property.	
to Cadiz	Restored	Part restored	On Affidavits of Property.	
to Cadiz	Restored	Part condemned	Want of Affidavits of Property.	
to Bilboa and Venice	Restored	Part restored	On Affidavits of Property.	
to Cadiz	Restored	Restored	On Affidavit of Property.	
to Hambourg	Restored	Restored	On the Ship-Papers.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	The rest still depending	Want of Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	
to Altena	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Koningberg				
to Dantzick	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg				
to Lubek	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Hambourg	Restored	Part condemned	Want of Affidavits of Property.	
to Hambourg	Restored	Part restored	On Affidavits of Property.	
to Bourdeaux	Restored	Part condemned	Want of Affidavits of Property.	
to Bourdeaux	Restored	Restored	On Affidavits of Property.	
to Roan	Restored	Restored	On Affidavits of Property.	
to Hambourg	Restored	Restored	On Affidavits of Property.	

ality, and Sentence prayed on the Part of the *Prussian* Claimant, and the Goods were decreed to be restored.

